



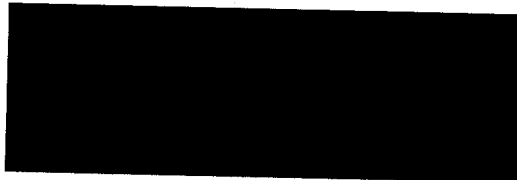
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U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



File: EAC-98-242-51156

Office: Vermont Service Center

Date:

MAY 14 2002

IN RE: Petitioner:
Beneficiary:



Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(L)

IN BEHALF OF PETITIONER:



Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Vermont Service Center, and the subsequent appeal was dismissed by the Associate Commissioner for Examinations. The matter is now before the Associate Commissioner for Examinations on motion to reopen and reconsider. The motion will be granted. The previous decision of the Associate Commissioner will be affirmed.

The petitioner is described as an importer and distributor of diamonds. It seeks to employ the beneficiary temporarily in the United States as its Traffic Manager. The director determined that the petitioner had not established that the beneficiary had been or would be employed in a primarily managerial or executive capacity.

On appeal, counsel stated that a brief would be submitted within 60 days. The Director, Administrative Appeals Office, determined that the brief had not been provided and summarily dismissed the appeal on April 5, 2000.

On motion to reopen, the petitioner provides a more detailed description of the beneficiary's proposed job duties and asserts that the beneficiary qualifies as an executive under the definition contained in 8 C.F.R. 214.2(1).

To establish L-1 eligibility under section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(a)(15)(L), the petitioner must demonstrate that the beneficiary, within three years preceding the beneficiary's application for admission into the United States, has been employed abroad in a qualifying managerial or executive capacity, or in a capacity involving specialized knowledge, for one continuous year by a qualifying organization and seeks to enter the United States temporarily in order to continue to render his or her services to the same employer or a subsidiary or affiliate thereof in a capacity that is managerial, executive, or involves specialized knowledge.

8 C.F.R. 214.2(1)(3) states that an individual petition filed on Form I-129 shall be accompanied by:

(i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (1)(1)(ii)(G) of this section.

(ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.

The United States petitioner was incorporated in 1994 and indicates that it is a subsidiary of the overseas company, K.G.K.

Enterprises, located in Bombay, India. The petitioner declares seven or eight employees and approximately \$3 million in gross revenues. The petitioner seeks to employ the beneficiary for three years at an annual salary of \$32,000.

At issue in this proceeding is whether the petitioner has established that the beneficiary will be employed primarily in a managerial or executive capacity.

Section 101(a)(44)(A) of the Act, 8 U.S.C. 1101(a)(44)(A), provides:

The term "managerial capacity" means an assignment within an organization in which the employee primarily-

- i. manages the organization, or a department, subdivision, function, or component of the organization;
- ii. supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;
- iii. if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and
- iv. exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

Section 101(a)(44)(B) of the Act, 8 U.S.C. 1101(a)(44)(B), provides:

The term "executive capacity" means an assignment within an organization in which the employee primarily-

- i. directs the management of the organization or a major component or function of the organization;
- ii. establishes the goals and policies of the organization, component, or function;

iii. exercises wide latitude in discretionary decision-making; and

iv. receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

In a letter accompanying the initial petition, the petitioner stated that the beneficiary, in his position as Traffic Manager, would "supervise 1-2 employees in the methods and procedures for transporting precious stones." The petitioner indicated that the beneficiary's duties would also include "primarily to direct the management of a major component of our organization, exercise wide latitude in discretionary decision-making and establish goals and policies of this function."

In response to a subsequent Service request for additional information, the petitioner provided a letter dated December 10, 1998, describing the beneficiary's proposed duties. The petitioner indicated that the beneficiary would spend approximately half of his time "coordinat[ing] and oversee[ing] import and export function."

In his decision dated April 1, 1999, the director determined that the petitioner had failed to demonstrate that the beneficiary was to be employed in a managerial or executive capacity.

On motion to reopen, the petitioner provides another description of the beneficiary's proposed duties. The petitioner stated that the beneficiary would spend 70 percent of his time "identifying and cultivating new information sources, and developing strong and mutually beneficial relationships with the custom's officers, the custom brokers, the management of both suppliers and customers, the shipping and transportation firm used, the expedite procedures for transporting goods and supplies, etc."

On review, the record as presently constituted is not persuasive in demonstrating that the beneficiary will be employed in a primarily managerial or executive capacity. The fact that an individual possesses an executive or managerial title does not *prima facie* establish eligibility for classification as a manager or executive within the meaning of section 101(a)(44)(A) and (B) of the Act. The Service must first look to the petitioner's description of the beneficiary's job duties and the evidence submitted in support of the claimed duties.

The petitioner has stated that a significant portion of the beneficiary's time would be spent directly overseeing the importation of merchandise. An employee who primarily performs the tasks necessary to provide a company's services is not considered to be employed in a managerial or executive capacity.

Matter of Church Scientology International, 19 I&N Dec. 593, 604 (Comm. 1988).

The evidence does not demonstrate that the beneficiary's primary duties will be directing the management of the organization; instead, it appears that he will be primarily performing the petitioner's services in trading with its distributors and suppliers. Nor does the record support a conclusion that the beneficiary primarily manages an essential function within the organization and functions at a senior level in an organizational hierarchy on a day-to-day basis. Based on the record of proceeding as constituted, the petitioner has failed to demonstrate that the beneficiary will be employed primarily in a qualifying managerial or executive capacity. For this reason, the petition may not be approved.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, that burden has not been met.

ORDER: The decision of the Associate Commissioner dated April 5, 2000, dismissing the appeal, is affirmed.